

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 353 CUTTACK, SATURDAY, MARCH 7, 2015/FALGUNA 16, 1936

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th February 2015

No. 1424–IR(ID)-120/2012-LESI–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December 2014 in I.D. Case No. 7/2013 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Eecutive Engineer, Jambhira Canal Division, Laxmiposi, Baripada, Dist. Mayurbhanj and their Workman Shri Kamal Kumar Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 07 OF 2013

Dated the 27th December 2014

Present :

Shri Saroj Kumar Sahoo, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of . . . First Party—Management
the Executive Engineer,
Jambhira Canal Division, Laxmiposi,
Baripada, Dist. Mayurbhanj.

And

Their Workman Shri Kamal Kumar Samal . . . Second Party—Workman
Ex Khalasi-cum-Peon,
S/o Pravash Kumar Samal,
At/P.O. Kumardihi, P.S. Jharpokharia,
Dist. Mayurbhanj.

Appearances :

Shri Subrat Mishra,	..	For the First Party—Management
Shri M. Mishra,		
Shri B. Das, Advocates		
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Shri Sushanta Dash, Advocate	..	For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause-(c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 120 IR (ID)/2012-2013/LESI, dated the 8th February 2013.

“Whether the termination of services of Shri Kamal Ku. Samal, Khalasi-*cum*-Peon, by the management of the Executive Engineer, Jambhira Canal Division, Laxmiposi, Baripada w.e.f. the 31st August 1996 is legal and/or justified ? If not, what relief Shri Samal is entitled to ?”

2. The second party workman had filed a complaint before the labour machinery, against the first party management challenging his illegal termination. The D.L.O., Baripada tried for a conciliation between the parties, but failed. In view of failure of settlement of the Industrial Dispute before the District Labour Officer, Baripada, the second party workman had filed an application under Section 2-A of the Industrial Dispute Act, 1947 before this Court on the 15th November 2012, which was registered as I.D. Case No. 50 of 2012. Thereafter a reference was received from the Government of Odisha in Labour & E.S.I. Department in exercise of power conferred upon it by sub-section(5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 relating to the same dispute between the parties for adjudication by this Court. So, I.D. Case No. 50 of 2012 which was initiated on the application by the second party workman was tagged with the present case bearing I.D. Case No.7 of 2013 by Order, dated the 12th March 2013 in I.D. Case No. 50 of 2012.

3. The case of the second party workman is that he was appointed as a Khalasi-*cum*-Peon on the 1st April 1992 in the office of the Executive Engineer on 89 days basis and his appointment order was issued vide Order No. 14/1992-93, dated the 2nd June 1992. Thereafter his engagement was extended from time to time and the applicant continued as such till the 31st August 1996. Including his duty as Khalasi-*cum*-Peon he was also performing his duty in the residence of the Executive Engineer, as and when directed by his authorities. He was performing his duty sincerely, diligently and to the utmost satisfaction of his employer. On the 30th August 1996 the first party management without any reason orally intimated the second party workman that his services is no more required with effect from the 31st August 1996. Thereafter the second party was not allowed to resume his duty with effect from the 31st August 1996. The said refusal of employment by the

first party management was without any notice, notice pay or compensation as per law. The second party workman was performing his duty continuously, un-interruptedly for more than 240 days for which he is entitled for the benefit provided under Section 25-F of the I.D. Act. The first party management has also violated the principle of "last come first go", as provided under Section 25-G of the I. D. Act. Some juniors to the second party workman are still continuing in service although he was retrenched. There are some fresh appointment of outsider which is also violation of Section 25-H of the I.D. Act, by the management. Due to the ill health of the second party and suffering of his mother from cancer the dispute could not be raised in time. The second party workman is unemployed at present and he has no other source of income to maintain his livelihood. Hence in present application before this Court he has prayed for reinstatement in service with full back wages and all other consequential service benefits.

4. In pursuance of notice the first party management entered its appearance before this Court and filed its written statement. The case of first party management is that this case is not maintainable before this Court. The case is also barred by the Law of Limitation as provided under the provisions of Industrial Disputes Act, 1947. There is no cause of action to file this case. The engagement of the second party by the first party management as contingent Khalasi is denied and disputed by the first party. The present claim of refusal of employment by the second party workman after about 16 years is with an intention to cause wrongful loss to the first party. The second party workman never worked for a continuous period of 240 days for which he has no right for reinstatement. There is also no necessity for compliance of the provisions of the I.D. Act, 1947 by the first party management. There was no refusal of employment or disengagement of the second party. The engagement if at any point of time, then the same might be for a temporary period and the second party had voluntarily abandoned his engagement. So, there is no retrenchment of the second party within the meaning of Section-2(oo) of the I.D Act, 1947. Absolutely there is no requirement to comply Section-25-F and G of the I.D Act, 1947 by the management. It is false to say that the first party has given fresh appointment to the outsiders. The second party must have been gainfully employed all these years for which he did not raise his claim in time. The second party workman is not entitled to any relief.

In view of the pleading of the parties the following issues are settled :

ISSUES

1. Whether the termination of services of Shri Kamal Kumar Samal, Khalasi-*cum*-Peon by the management of the Executive Engineer, Jambhira Canal Division, Laxmiposi, Baripada w.e.f. the 31st August 1996 is legal and/or justified ?
2. If not, what relief Shri Samal is entitled to ?

5. The second party workman is examined as W.W. 1 and Exts. 1, 2 series and 3 series are marked on behalf of the second party. Ext. 1 is the photo copy of the counter filed by the first party management before the Conciliation Officer-*cum*-D.L.O., Baripada. Ext.2 series are the photo copies of the office orders passed by the first party management. Ext. 3 series are letter No. 704 dated the

8th July 2011 of P.I.O., office of the F.A. and C.A.O., S.I. Project, Laxmiposi, Baripada and the photo copies of Fully Voucher Contingent Bills. On the other hand the Assistant Engineer(Civil) Baisinga Canal Subdivision-III, Laxmiposi, Baripada, is examined as M.W.1 and Exts. A and B series are marked. Ext.A is the photo copy of the medical certificate dated the 23rd February 2010 issued by the Doctor in favour of the second party workman. Ext. B series are the relevant entries relating to wage register of contingent Khalasi. Ext. C is the application of the second party dated the 6th May 2010 sent to the first party management by regd.post with A.D.

FINDINGS

ISSUE No. I

6. The second party workman has filed his statement of claim. At paragraph-3 of his statement of claim he has clearly mentioned that he was appointed as a Khalasi-*cum*-Peon on the 1st April 1992 in the office of the Executive Engineer on 89 days basis vide Order No.14/92-93 dated the 2nd June 1992 and thereafter his engagement was further extended from time to time till the 31st August 1996. At paragraph-5 of his statement of claim he has also mentioned that on the 30th August 1996 without any reason the first party management informed him orally that his service is no more required with effect from the 31st August 1996 and such refusal of service amounts to retrenchment. The workman is examined as W.W.1. at paragraph 6 of his affidavit evidence filed before this Court the second party workman admitted that on the 1st April 1992 he was appointed by the management as a Khalasi-*cum*-Peon in the office of the Executive Engineer, on 89 days basis vide Order No.14/92-93, dated the 2nd June 1992. In the said paragraph he further admitted that his engagement was further extended from time to time and he continued as such till the 31st August 1996. The first party management in its written statement averred at paragraph 5 that the allegation of the second party that he was working as contingent Khalasi is denied and disputed by the first party. Ext. 2 is the photo copy of the office order No.14/92-93, dated the 2nd June 1992 of the first party management which has been marked on behalf of the second party workman on admission by the first party. On perusal of the same it is clear that the second party was appointed as a contingent Khalasi under contingent establishment on a consolidated pay of Rs. 650 per month on purely temporary basis for a period of 89 days i.e. from the 1st April 1992 to 28th June 1992 and attached to the Executive Engineer. It further transpires from Ext.2 that the service of the second party was purely temporary which can be terminated at any time without any prior notice or assigning any reason. Ext. 2/a to 2/d are the photo copies of the office orders passed by the first party management at different point of time in which the services of the second party was extended in different spells with a short break in between. The documents which are marked Ext.2 to Ext. 2/d on behalf of the second party workman were admitted into evidence on admission by the first party management. Although the first party management in its written statement denied and disputed the engagement of the second party as contingent Khalasi, the only witness M.W.1 who has been examined on behalf of the first party management admitted in his evidence that the second party was engaged as contingent Khalasi under the first party management during

the year 1992 to 1997. M.W.1 also deposed that the engagement of the second party was on a number of occasions within that period. At paragraph-5 of his affidavit evidence M.W.1 admitted that the second party was appointed as a Contingent Khalasi under the contingent establishment with effect from the 1st April 1992 and he worked as such up to October 1997 subject to requirement of the contingent work under different divisions at different time. At paragraph-6 of his affidavit evidence he further deposed that the second party was not orally terminated from his service by the first party management with effect from the 31st August 1996 and as the second party was aware about the end point of his employment he never turned up to work after the 31st October 1997. He proved Ext. B series which relates to disbursement of wage to the contingent Khalasi. On perusal of Ext. B series it transpires that the second party workman has received his salary from the first party management till October 1997. It is not the case of the second party (as per its claim statement) that he was serving under the first party management till October, 1997. It is also not the case of the first party management that the second party served under the management till October, 1997. The first party management submitted that due to separation of the office, the important documents such as Ext. B series were not produced before this Court earlier and it was only during the evidence those documents were made available to the management. It was suggested to M.W.1 that after taking signatures of the second party on Ext. B series subsequently those documents were prepared by the management. On perusal of Ext. B series it is clear that those are parts of the wage register which was maintained for disbursement of salary to the contingent Khalasi. On perusal of said register it is clear that the second party workman and a lot of other contingent Khalasis have received their salary by putting their signatures on the register against their name. The register is produced by an employee of the State Government and it is a public document. The workman has also admitted his signature on Ext. B series. So there is no reason to disbelieve the Ext. B series which were produced from proper custody. None of the parties came to the Court in clean hand. However, it is the duty of the Court to separate the grain from the chaff. So after going through the materials on record it is clear that the second party workman was under the management till October, 1997 and he was not refused for his work by the management on the 30th August 1996.

7. It is specifically averred in the statement of claim by the workman that he was refused of his service by the first party management on the 30th August 1996. From Ext. B series it appears that the second party workman was in service till October, 1997. However, it has been specifically pleaded by the second party workman in his statement of claim that he was appointed as Khalasi-*cum*-Peon on the 1st August 1992 and his engagement was further extended from time to time till the 31st August 1996. The second party workman W.W.1 also in his evidence admitted that he was appointed as a Khalasi-*cum*-Peon on the 1st April 1992 for a period of 89 days vide Order No.14/92-93, dated the 2nd June 1992 and thereafter his engagement was further extended from time to time till the 31st August 1996. W.W.1 proved Ext.1 the counter filed by the management before the Conciliation Officer and the Ext. 2 series the office orders passed by the first party management at different point of time. On perusal of those documents it is clear that the engagement

of the second party was at different spells with break of some days. As the engagement of the second party workman was for a particular period and there was no renewal of his service automatically the service of the second party was terminated due to efflux of time. So the disengagement of the second party by the first party management even on the 30th August 1996 is not coming under the definition of retrenchment (Kishore Chandra Samal Vrs. Divisional Manager, Odisha State Cashew Development Corporation Ltd. passed in Civil Appeal No. 5458 of 2004 decided on 17th November, 2005 by the Hon'ble Supreme Court of India). So after analysing the evidence on record and the aforesaid pronouncements of the Apex Court it is clear that there is no necessity of compliance of the provisions of the I.D. Act, 1947 by the management.

8. Hence, there was no refusal of service to the second party workman by the first party management on the 30th August 1996.

9. The Learned Counsel for the second party workman relied on decisions reported in AIR 1999 Supreme Court 1351 Ajaib Singh Vrs. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and others and submitted that the provisions of Limitation Act, is not applicable to a reference under Industrial Disputes Act. On the other hand the learned counsel for the first party management relied on decisions reported in AIR 2005 Supreme Court 1843 Haryana State Co-operative Land Development Bank Vrs. Nelam, AIR 1993 Supreme Court 2276 Ratan Chandra Samanta and others Vrs. Union of India and others, AIR 2000 Supreme Court 839. The Nedungadi Bank Limited Vrs. K. P. Maadhavan Kutty and others and submitted that although there is no provision under I. D. Act, which prescribes a period of limitation to raise an Industrial Dispute before the Labour Court can mould its reliefs in case of delay. Admittedly the provisions of the Limitation Act, is not applicable to the I. D. Act. It is also admitted that there is no period of limitation for a reference by the Government under the Act. However, after going through the pronouncements of the Apex Court relied on by the first party management it is clear that the words "at any time" used in Section 10(1) do not admit of any limitation in making an order of reference and Laws of Limitation are not applicable to the proceedings under the I. D. Act. However, the policy of Industrial adjudication is that very stall claims should not be generally encouraged or allowed in as much as unless there is satisfactory explanation for delay, as apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers financial arrangement and to avoid dislocation of an Industry. Every case has to be taken on its facts and circumstances and it is nowhere held by the Hon'ble Appex Court that how-so-ever and inordinate and unexplained delay may be on the part of the workman the delay has to be condoned. In the case in hand it is alleged that the second party workman was terminated from his service since the 31st August 1996. Admittedly only on the 24th February 2010 the second party workman had raised the present dispute before the D.L.O., Mayurbhanj. There is delay of about 14 years in raising the dispute by the second party workman before a Competent Authority. The plea of the second party workman is that due to his ill health and due to suffering of his mother from Cancer, there is delay in filing the complaint before the D.L.O., Mayurbhanj. The second party workman has not filed any document to show that he was ill and his mother was under treatment for Cancer. On the other hand during his cross-examination the first party management proved Ext. A on admission by the second party workman. On perusal of Ext. A,

it appears that the second party workman was suffering from the 1st March 1997 to the 23rd February 2010. Ext. B series are the relevant entries of the Register of wages relating to Contingent Khalasi who were engaged under the first party management. On perusal of Ext. B series it is clear that the second party was engaged by the first party management till the 19th October 1997. No doubt Ext. B series are produced by the management during evidence. Due to long delay in raising the dispute and separation of Division it was not possible on the part of the management to search relevant documents and produce the same before the Court due time. The inconvenience caused to the management is only due to the delay in filing the industrial dispute by the workman after about 14 years of his alleged termination. So in this case the delay in filing the industrial dispute by the workman is fatal. On the other hand it is also clear that the second party workman was not suffering till the 19th October 1997. No reliance can be placed on Ext. A. So the plea taken by the second party workman that the delay in raising the industrial dispute is due to his illness and treatment of his mother is not at all reliable and trustworthy. There is unexplained delay in raising the dispute by the workman.

10. It is the claim of the second party workman that a lot of juniors to him are continuing in service although he has been retrenched. It is also his case that some new persons are employed by the first party management after his retrenchment. Absolutely there is no such reliable evidence on record to show that some persons who are juniors to the second party workman are continuing in service and that some new persons have been employed. The second party workman failed to prove through legal evidence that the first party management has violated Section-25G and Section-25H of the I.D. Act, 1947.

ISSUE No. 2

In view of my findings under issue No. 1 the second party workman is not entitled for any other relief.

The reference is disposed off accordingly.

Dictated and corrected by me

S. K. SAHOO

27-12-2015

Presiding Officer
Labour Court, Bhubaneswar.

S. K. SAHOO

27-12-2015

Presiding Officer
Labour Court, Bhubaneswar.

By order of the Governor

M. NAYAK

Under-Secretary to Government